

**Nineteenth Session of the Intergovernmental Group of Experts on
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Competition Law, Policy and Regulation in the Digital Era

Contribution of

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*«Ever since competition law met data and
started walking on boundaries»*

Ms.Büşra ÖZCAN,
Assistant Competition Expert

7-9 July 2021

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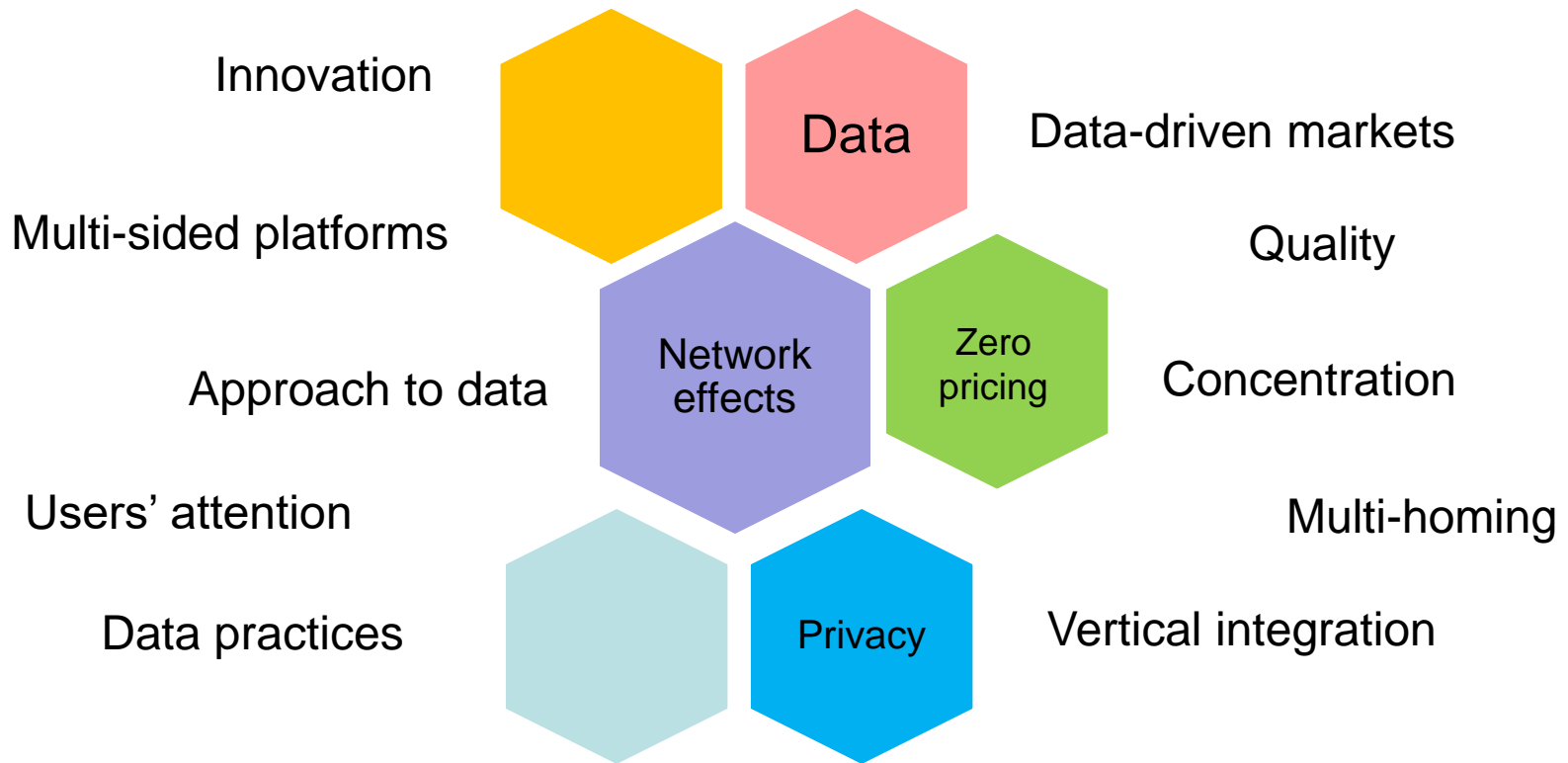
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Outline for today's presentation

- General sight on digital markets
- Questions and challenges before competition authorities
- Examples of Turkish Competition Authority's experience
- Decision on *Google Local Search*
- Closing remarks

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General sight on digital markets



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General sight on digital markets

- Digital platforms and their environments
- Dynamic structure of digital markets
- Intensive use of data in digital markets
- Quality, privacy, data security as competitive parameters
- Market failures (such as information asymmetries, imbalance between the contracting parties)
- Concerns about misuse of data
- Possible exploitative behaviours in abuse of dominant position
- Cookies, tracking technologies, online advertising activities under the spotlight
- Specific set of rules for «Gatekeepers»



Google



Apple



Microsoft

LinkedIn



amazon.com

YouTube



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Questions and challenges before competition authorities

- Difficulties start with questions: how to define market, how to measure market power, etc.
- As antitrust community or national enforcers, do we need regulatory approaches and new tools, more measures and modalities to achieve fair and contestable markets goal and to better handle the competition cases in digital markets?
- Would it be possible to intervene effectively with classic means of competition law and policy in digital markets?
- Is there a need for further discuss on possible theories of harm (such as excessive data collection, leveraging, *sui generis* tying, unfair contracting/trading terms), should we propose new theory of harm to fill the gap for promoting competition law and policy in our jurisdictions, if there is any?
- Should competiiton law be the one who intervene in case of increased collection of personal information (this term even change jurisdiction to jurisdiction, platform to platform)?

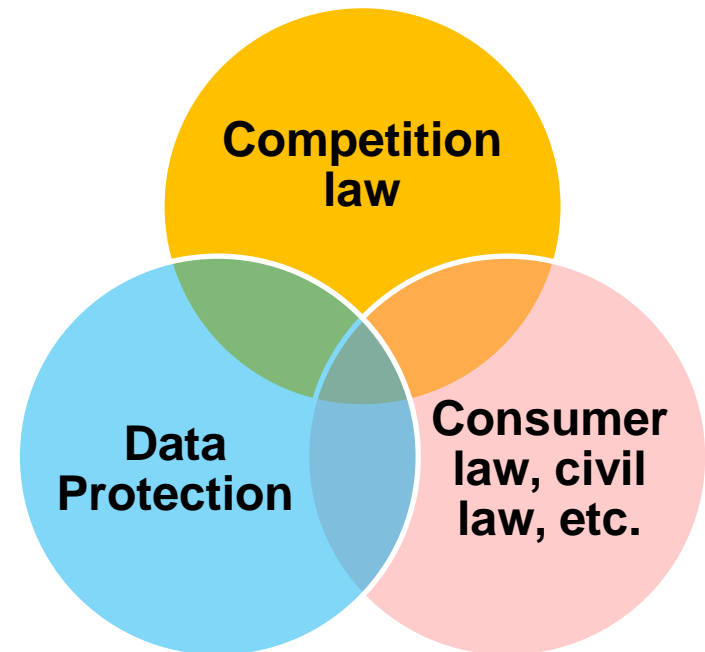
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Questions and challenges before competition authorities

- Data practices (including collection, use and sharing activities by the platforms)

Question of boundaries:

- Competition law should intervene some interdisciplinary problems which occur in the digital markets?
- Which is the most appropriate tool in overlapping areas?



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Questions and challenges before competition authorities

Possible competitive remedies for digital markets:

- ✓ Data portability (unlike GDPR, has not enacted as a right in the scope of Turkish Data Protection Act)
- ✓ Data and protocol interoperability

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Questions and challenges before competition authorities

- As it is publicly announced, Turkish Competition Authority (TCA) has also started to preparatory work on draft law regarding digital markets. TCA's professional experience is also accompanied with academic perspective.
- Dialogue with the market participants via request for information.
- Similar to EU Commission's Digital Markets Act draft law, some digital markets constituted a starting point for competitive concern.
- Response to need for reglementation against gatekeepers.

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Examples of Turkish Competition Authority's experience

Booking

- File number: 2015-5-002
- 05.01.2017 dated and 17-01/12-4 numbered decision of the Board
- Best price guarantee practice-MFC Clause
- Online accommodation booking platform services market

Google Android

- File number: 2015-2-036
- 19.09.2018 dated and 18-33/555-273 numbered decision of the Board
- Default position in mobile devices

Google Shopping

- File number: 2018-2-017
- 13.02.2020 dated and 20-10/119-69 numbered decision of the Board
- Online comparison shopping services

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Examples of Turkish Competition Authority's experience

Google Adwords

- File number: 2018-2-038
- General search services, content providing services

Yemeksepeti

- File number: 2019-3-079
- Online food ordering platform services
- MFC Clause, Exclusivity
- Commitments accepted

Çiçeksepeti

- File number: 2020-3-006
- Online flower sale services
- Exclusivity
- Commitments accepted

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Examples of Turkish Competition Authority's experience

Google Local Search

- File number: 2018-2-052
- 08.04.2021 dated and 21-20/248-105 numbered Board decision
- Local search services, accommodation price comparison services

Sector Inquiry on Online Marketplaces

- File number: 2020-2-015
- Ongoing inquiry, interim report has been published on May

Sector Inquiry on Digital Advertising Market

- File number: 2021-1-004
- Ongoing inquiry

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Examples of Turkish Competition Authority's experience

Sahibinden.com

- File number: 2017-2-003
- Ongoing investigation after the annulment of previous Board decision
- Excessive pricing case in digital markets
- Online platform services for real estate sales and rentals, online platform services for vehicle sales

Nadirkitap.com

- File number: 2020-5-038
- Ongoing investigation
- Online intermediary platform services on second hand books
- Discussions on right to data portability and essential facility doctrine on data

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Examples of Turkish Competition Authority's experience



Facebook/WhatsApp Investigation

- Board's decision on investigation (*ex officio*)
- Board's interim measure decision

File number: 2021-1-002

ongoing investigation on data sharing practices between Facebook and its undertakings



Interim measure decision (Art.9 of the Turkish Competition Act) play an important role, as well as the investigation decision

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Google

Decision on Google Local Search

- File number: 2018-2-052
- 08.04.2021 dated and 21-20/248-105 numbered Board decision (only the short decision has been published yet)
- Investigation against Google (including Alphabet Inc., Google LLC, Google International LLC, Google Ireland Limited, Google Reklamcılık ve Pazarlama Ltd. Şti.)
- Relevant product markets: General search market, local search services, accommodation price comparison services
- Conclusion: Google preferenced its own local search services and accommodation price comparison service on Google Search result pages, by displaying results above rivals, in larger spaces and with a richer visual design.

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Decision on *Google Local Search*

Local search service allows users (searchers) to search local businesses/institutions/ professionals within a geographic area (which users determine), accordingly, provides access to detailed information (such as location, contact information, user reviews, opening and closing hours, price and photo) about the professional staff/businesses/institutions such as restaurants, hotels, plumbers, hairdressers, hospitals, doctors, schools or public institutions.



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Decision on *Google Local Search*

Google operates in Turkey's search services market through a «unit» that it displays on its internet search results pages above its rivals.

This «unit» may also be known as **OneBox** technology, **Local Unit** and **Hotel Unit**.

What was found anticompetitive: Google does not allow rivals to access this unit, which gave Google a significant advantage.

Exclusion of Google's competitors in both markets (local search and accommodation price comparison services markets).

This leads us breach of Article 6 of Turkish Competition Act-Abuse of dominant position in both markets (local search and accommodation price comparison services markets).

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Decision on *Google Local Search*

According to the 08.04.2021 dated and 21-20/248-105 numbered Board decision;

- TCA fined Google 296 million Turkish lira (€30.7 million) for breaching rules against abuse of dominance.
- TCA ordered Google to remedy the alleged preferencing of its own services in the local search service and accommodation price comparison markets. The behavioural conditions on the company, ordering Google to stop putting local search and accommodation price comparison competitors in a disadvantageous position within six months.
- The agency also ordered Google to provide it with annual reports for five years to demonstrate its compliance.



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Closing remarks

We would like to answer your questions, if there is any?



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Closing remarks

Many thanks,

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